

Amendment Number 2
to
Contract Number DIR-SDD-2031
between
State of Texas, acting by and through the Department of Information Resources
and
Unisys Corporation

This Amendment Number 2 to Contract Number DIR-SDD-2031 (“Contract”) is between the Department of Information Resources (“DIR”) and Unisys Corporation (“Vendor”). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Contract, Section 2. Term of Contract** is hereby amended as follows:

DIR and Vendor hereby agree to extend the term of the Contract for one (1) year through February 19, 2016, or until terminated pursuant to the termination clauses contained in the Contract. Prior to expiration of the term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to one (1) additional one-year renewal term.

2. **Contract, Section 4. Pricing**, is hereby restated in its entirety as follows:

4. Pricing

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 7, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee.

3. **Contract, Section 4, Pricing, A – G**, is deleted and is hereby restated in its entirety in Appendix A, Standard Terms and Conditions For Services Contracts dated 02/04/15, Section 7. Pricing, Purchase Orders, Invoices, and Payments, as attached hereto.

4. **Contract, Section 5. DIR Administrative Fee, A.** is hereby restated in its entirety as follows:

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three quarters of one percent (.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00. The effective date of this change will be May 1, 2015.

5. **Contract, Section 6. Notification** is hereby restated in its entirety as follows:

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below:

If sent to the State:

Dana L. Collins, CTPM, CTCM
Manager, Contract and Vendor Management
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 936-2233
Facsimile: (512) 475-4759
Email: dana.collins@dir.texas.gov

If sent to the Vendor:

Janine Huebner
Contracts Manager
Unisys Corporation
801 Lakeview Avenue, Suite 100
Blue Bell, PA 19422
Phone: (323) 982-0550
Email: janine.huebner@unisys.com

6. **Contract, Section 7. Sample Supplemental Service and Leasing Agreement** is hereby amended by adding item C. Conflicting or Additional Terms in its entirety as follows:

C. Conflicting or Additional Terms

In the event that conflicting or additional terms in Vendor Software License Agreements, Shrink/Click Wrap License Agreements, Service Agreements or linked or supplemental documents amend or diminish the rights of DIR Customers or the State, such conflicting or additional terms shall not take precedence over the terms of this Contract.

7. **Contract, Section 8. Intellectual Property Matters, A – L**, is deleted and is hereby restated in its entirety in Appendix A, Standard Terms and Conditions For Services Contracts dated 02/04/15, Section 4. Intellectual Property Matters, as attached hereto.
8. **Appendix A. Standard Terms and Conditions For Services Contracts**, is hereby restated in its entirety and replaced with the attached **Appendix A. Standard Terms and Conditions For Services Contracts** dated 02/04/15.
9. **Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts, as listed below** are hereby added as follows:

- A. **Section 3. General Provisions, H. Proof of Financial Stability** is hereby replaced in its entirety:

Either DIR or Customer may require Vendor to provide proof of financial stability prior to or at any time during the contract by providing the most current publicly available financial disclosures to DIR or Customer.

- B. **Section 4. Intellectual Property Matters** first paragraph only is added to section as stated below:

The original scope of this Agreement does not include generation of original IP or custom IP work; therefore, the IP language below does not apply to the scope of services to be provided by Unisys under this Agreement as currently set forth in Appendix C (Pricing Index) and Appendix D (Sample Supplemental Agreement). In the event the parties agree to modify the scope of the Agreement, to include generation of original IP or customization of IP, then IP terms and conditions below for such new scope will be included in the statement of work.

C. Section 6. Contract Fulfillment and Promotion, A. Service, Sales and Support of the Contract is hereby replaced in its entirety:

Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote services available under the Contract. Vendor shall use commercially reasonable efforts to make potential Customers are made aware of the existence of the Contract. All sales to Customers for services available under the Contract shall be processed through the Contract.

D. Section 6. Contract Fulfillment and Promotion, C. Services Warranty and Return Policies, is hereby replaced in its entirety:

Order Fulfiller will adhere to the Vendor's then-currently published policies concerning services warranties and returns. Such policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated Customers for like services. Except as described in this Agreement, Unisys makes no other warranties. TO THE EXTENT PERMITTED BY LAW, UNISYS DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE FOR PRODUCTS AND SERVICES.

E. Section 7. Pricing, Purchase Orders, Invoices and Payments, A. Manufacturer's Suggested Retail Price (MSRP) or List Price is hereby restated as follows:

A. Manufacturer's Suggested Retail Price (MSRP)

MSRP is defined as the price specified by the Vendor as listed in Appendix C, Pricing Index

F. Section 7. Pricing, Purchase Orders, Invoices and Payments, B. Customer Discount is hereby restated as follows:

B. Customer Discount

The minimum Customer discount for all products and services will be the percentage off MSRP as specified in Appendix C, Pricing Index.

G. Section 7. Pricing, Purchase Orders, Invoices and Payments, C. Customer Price 1) is hereby restated as follows:

1) The price to the Customer is listed in Appendix C, Pricing Index.

H. Section 9. Vendor Responsibilities, A. Indemnification, is hereby replaced in its entirety:

1) Acts or Omissions

Vendor shall indemnify and hold harmless the State of Texas and Customers, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees, from and against any and all liability, actions, claims, demands, or suits, and all related costs, attorney fees and expenses to the extent they arise out of, any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. VENDOR'S OBLIGATIONS SET FORTH ABOVE WILL NOT BE PRECLUDED OR AVOIDED BY ANY CLAIM OF CONTRIBUTORY NEGLIGENCE. The defense shall be coordinated by the Office of the Attorney General for Texas State Agency customers and by Customer's legal counsel for non-state agency customers.

2) Infringements

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees, from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the performances or actions of vendor pursuant to this Contract. Vendor and the Customer agree to furnish timely written notice to each other of any such claim. Vendor shall be liable to pay all costs of defense including attorneys' fees. The defense shall be coordinated by the Office of the Attorney General for the Texas State Agency customers and by Customer's legal counsel for non-state agency customers.

The indemnities provided by Vendor in this Agreement are dependent on the party requesting indemnification giving prompt written notice thereof to the Vendor. Neither party shall enter into any settlement that imposes an obligation on the other party without the other party's written consent, which shall not be unreasonably withheld.

b) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

3) PROPERTY DAMAGE

IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION OF ANY PROPERTY OF CUSTOMER OR THE STATE TO THE EXTENT DUE TO THE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF THE VENDOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS, THE VENDOR SHALL PAY THE FULL COST OF EITHER REPAIR, RECONSTRUCTION, OR REPLACEMENT OF THE PROPERTY, AT THE CUSTOMER'S SOLE ELECTION. SUCH COST SHALL BE DETERMINED BY THE CUSTOMER AND SHALL BE DUE AND PAYABLE BY THE VENDOR NINETY (90) CALENDAR DAYS AFTER THE DATE OF THE VENDORS RECEIPT FROM THE CUSTOMER OF A WRITTEN NOTICE OF THE AMOUNT DUE.

I. **Section 9. Vendor Responsibilities, G. Responsibility for Action**, is hereby replaced in its entirety:

1) Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors in the performance of their obligations under this agreement, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.

2) Vendor, for itself and on behalf of its subcontractors, shall report to DIR promptly when the disclosures under Item 17 of Appendix A to the RFO and/or Section 7.C. (xi) and (xii), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose employment of current or former State employees and their relatives and/or the status of conflicts of interest.

J. **Section 9. Vendor Responsibilities, I. Security of Premises, Equipment, Data and Personnel** is hereby replaced in its entirety:

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer, as provided to Vendor in writing. Vendor shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

K. **Section 9. Vendor Responsibilities, K. Limitation of Liability**, is hereby replaced in its entirety:

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State of Texas, none of the parties shall be liable to the other for punitive, special, indirect, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to a Customer shall be limited to the total amount paid by such Customer to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to claims of patent, trademark, or copyright infringement.

L. Section 9. Vendor Responsibilities, N. Required Insurance Coverage, is hereby replaced in its entirety:

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer, however, such approval shall not be unreasonably withheld. All required insurance must be issued by companies that are A+ financially rated and duly licensed, admitted, and authorized to do business in the State of Texas. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include a combined single limit of \$500,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate of \$500,000. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured but only to the extent of bodily injury or property damage caused by the negligence of Unisys;
- d) 30-day Notice of Termination in favor of DIR and/or Customer; and
- e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

2) Workers' Compensation Insurance

Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat) and minimum policy limits for Employers' Liability of \$250,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$250,000 per disease per employee.

3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation;
- b) 30-day Notice of Termination; and
- c) Additional Insured to the extent of the liability as set forth in the indemnity provisions of the Contract.

M. Section 9. Vendor Responsibilities, S. Secure Erasure of Hard Disk Managed Services Products and/or Services, is hereby replaced in its entirety:

Vendor agrees that all managed service products and/or services equipped with hard disk drives (i.e., computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) provided by Vendor shall have the capability to securely erase data written to the hard drive prior to final disposition of such managed service products and/or services, either at the end of the managed service product and/or services' useful life or at the end of the Customer's managed service product and/or services' useful life or the end of the related Customer Managed Services Agreement for such products and/or services, in accordance with 1 TAC 202.

N. Section 10. Contract Enforcement, C. Force Majeure, is hereby replaced in its entirety:

DIR, Customer, or Vendor will be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to continue performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order for convenience if it is determined by the Customer that Vendor will not be able to deliver services in a timely manner to meet the business needs of the Customer as a result of a Force Majeure event.

All other terms and conditions of the Contract not specifically modified herein shall remain in full force and effect. In the event of a conflict among provisions, the order of precedence shall be this Amendment Number 2, then Amendment Number 1 and finally the Contract.

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IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of the last signature, but in all events, no later than February 19, 2015.

Unisys Corporation

Authorized By: Signature on file

Name: Janine Huebner

Title: Contracts Manager

Date: 3/24/15

The State of Texas, acting by and through the Department of Information Resources

Authorized By: Signature on file

Name: Dale Richardson

Title: Chief Operations Officer

Date: 4/3/15

General Counsel: D.R. Brown 4/1/15